

file a complaint and of the complainant's duty to assure that the EEO Programs Director is informed immediately if the complainant retains counsel or a representative.

(e) Prior to the end of the 30-day period, the aggrieved person may agree in writing with the Board to postpone the final interview and extend the counseling period for an additional period of no more than 60 days. If the matter has not been resolved before the conclusion of the agreed extension, the notice described in paragraph (d) of this section shall be issued.

(f) In the event the aggrieved person believes that he/she has been discriminated against and agrees to participate in an established Board alternative dispute resolution procedure, the pre-complaint processing period of this section will be 90 days. If the matter has not been resolved before the 90th day, the notice described in paragraph (d) of this section shall then be issued.

(g) The EEO Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint. The EEO Counselor shall not reveal the identity of an aggrieved person who consulted the EEO Counselor, except when authorized to do so by the aggrieved person, or until the Board has received a discrimination complaint under this part from that person involving the same matter.

§ 268.205 Individual complaints.

(a) A complaint alleging that the Board discriminated against the complainant must be filed with the Board.

(b) A complaint must be filed within 15 calendar days of receipt of the notice required by §§ 268.204 (d), (e) or (f) of this part.

(c) A complaint must contain a signed statement from the person claiming to be aggrieved or that person's attorney. This statement must be sufficiently precise to identify the aggrieved person and to describe generally the action(s) or practice(s) that form the basis of the complaint. The complaint must also contain a telephone number and address where the complainant or the complainant's representative can be contacted.

(d) The EEO Programs Director shall acknowledge receipt of a complaint in

writing and inform the complainant of the date on which the complaint was filed. Such acknowledgement shall also advise the complainant that:

(1) The complainant has the right to file a request for review with the Commission with regard to the Board's final decision or dismissal of all or a portion of a complaint; and

(2) The Board is required to conduct a complete and fair investigation of the complaint within 180 days of the filing of the complaint unless the parties agree in writing to extend the period.

§ 268.206 Dismissals of complaints.

(a) The Board shall dismiss a complaint or a portion of a complaint:

(1) That fails to state a claim under §§ 268.203 and 268.205(c) of this part, or states the same claim that is pending before or has been decided by the Board or the Commission;

(2) That fails to comply with the applicable time limits contained in §§ 268.204, 268.205(b) and 268.305(b) of this part, unless the Board extends the time limits in accordance with § 268.604(c) of this part, or that raises a matter that has not been brought to the attention of an EEO Counselor and is not like or related to a matter that has been brought to the attention of an EEO Counselor;

(3) That is the basis of a pending civil action in a United States District Court in which the complainant is a party, provided that at least 180 days have passed since the filing of the administrative complaint, or that was the basis of a civil action decided by a United States District Court in which the complainant was a party;

(4) That is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory;

(5) Where the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 15 calendar days to a notice of proposed dismissal sent to his or her last known address;

(6) Where the Board has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and

the complainant has failed to respond to the request within 15 calendar days of its receipt or the complainant's response does not address the Board's request, provided that the request included a notice of the proposed dismissal. Instead of dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available; or

(7) If, prior to the issuance of the notice required by § 268.207(f) of this part, the complainant refuses within 30 days of receipt of an offer of settlement to accept the Board's offer of full relief containing a certification from the Board's Staff Director for Management, the General Counsel or a designee reporting directly to the Staff Director for Management or General Counsel (after consulting with the EEO Programs Director) that the offer constitutes full relief, provided that the offer gave notice that failure to accept would result in dismissal of the complaint. An offer of full relief under this paragraph (a)(7) is the appropriate relief in § 268.501 of this part.

(b) The Board shall inform the complainant of the right to file a request for review with the Commission with regard to the dismissal of the individual complaint pursuant to § 268.401 of this part, or to file a civil action. A copy of EEOC Form 573, notice of Appeal/Petition, shall be attached to the Board's decision to dismiss an individual complaint under this section.

§ 268.207 Investigation of complaints.

(a) The investigation of individual complaints shall be conducted by an investigator appointed by the EEO Programs Director.

(b) Consistent with guidance proffered by the Commission, the Board, through the EEO Programs Director, shall develop a complete and impartial factual record upon which to make findings on the matters raised by the written complaint. The investigator may use an exchange of letters or memoranda, interrogatories, investigations, fact-finding conferences or any other fact-finding methods that efficiently and thoroughly address the matters at issue. The EEO Programs Director may incorporate alternative dispute resolution techniques into the

investigation in order to promote early resolution of complaints.

(c) The procedures in paragraphs (c)(1) through (4) of this section apply to the investigation of complaints:

(1) The complainant, the Board and any employee of the Board shall produce such documentary and testimonial evidence as the investigator deems necessary, consistent with applicable laws, regulations and policies of the Board.

(2) The investigator may administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When the complainant, or the Board or its employees, fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits or the attendance of witness(es), the investigator may note in the investigative record that the Board when rendering a final decision should, or the Commission on review may, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as it deems appropriate.

(4) If documentary or testimonial evidence is needed by the investigator, and such documentary evidence is known to be contained in the files of another federal agency, or the testimony of an employee of another federal agency is needed, the EEO Programs Director shall, if necessary, contact the Commission for assistance in obtaining such documentary or testimonial evidence.

(d) The investigation shall be conducted by an investigator with appropriate security clearances.